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NO. PD-0388-21

APPELLATE COURT CAUSE NO. 03-19-00293-CR

FILED
COURT OF CRIMINAL APPEALS
11/30/2021
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IN THE COURT OF CRIMINAL APPEALS

SILAS GRAHAM PARKER,
Petitioner

VS.

THE STATE OF TEXAS,
Respondent

STATE'S REPLY TO PETITIONER'S BRIEF ON DISCRETIONARY REVIEW

FROM THE COURT OF APPEALS FOR THE THIRD DISTRICT AT AUSTIN

ORIGINAL APPEAL FROM THE 274TH JUDICIAL DISTRICT COURT,

HAYS COUNTY, TEXAS, TRIAL COURT CAUSE NO. CR-18-0250

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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW the State of Texas, by and through her Criminal District Attorney, Wesley H. Mau, and files this Reply pursuant to Tex. R. App. P. 70.2 and would show the Court the following:

STATEMENT OF THE CASE

Applicant moved to suppress narcotics evidence recovered by law enforcement during service of an "anticipatory search warrant." The trial court denied the motion. Applicant pled guilty and was placed on deferred adjudication community supervision for Possession of a Controlled Substance, reserving the right to appeal.[1]

STATEMENT REGARDING ORAL ARGUMENT

The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.[2] Applicant has waived oral argument, but should the court desire the parties to appear and argue, the State will appear for oral argument.[3]

ISSUE PRESENTED

Does Texas law prohibit anticipatory search warrants?

STATEMENT OF FACTS

A United Postal Service agent in Oregon intercepted two packages containing 40 one-pound bags of psilocybin mushrooms scheduled for delivery to Applicant in

[1] *See* Clerk's Record (CR) 45-54 (Plea Bargain Agreement); 56 (Trial Court's Certification of Defendant's Right to Appeal); and 73-74 (Order of Deferred Adjudication).
[2] *See* Tex. R. App. P. 39.1.
[3] *See* Tex. R. App. P. 39.7.

Hays County.[4] Oregon State Police contacted Hays County Narcotics Task Force Detective Lee Harris ("Harris"), who requested that the packages be sent as scheduled, after removing all but one bag from each package.[5] After confirming that the delivery address was Applicant's, Harris applied for a warrant to

> authorize [Harris] to search said [delivery address] for [the packages] and seize the same and to arrest [Respondent] on or around the expected delivery date of June 9th, 2017, after [Harris] has been able to confirm parcel delivery to said suspected place and premises.[6]

On the delivery date, Harris observed the United Postal Service ("UPS") delivery truck entering the property and confirmed that the UPS website reported the package had been delivered.[7] Harris and other officers then executed the warrant and recovered the contraband.[8]

SUMMARY OF THE ARGUMENT

An anticipatory search warrant is "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place."[9] The United States Supreme Court has declared anticipatory search warrants constitutional under the Fourth Amendment. Texas

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[4] State's Exhibit (SX) 1; *Parker v. State*, 03-19-00293-CR, 2021 WL 1567882, at *1 (Tex. App.—Austin Apr. 22, 2021, pet. granted).
[5] *Id*.
[6] *Id*; CR at 17.
[7] *Id*.
[8] *Id*.
[9] *United States v. Grubbs*, 547 U.S. 90, 94, 126 S. Ct. 1494, 1498, 164 L. Ed. 2d 195 (2006).

Constitution, Article I, §9, does not differ significantly from the Fourth Amendment so as to justify any distinction between the treatment of search warrants under federal or state constitutional principles.

Texas' search warrant statutes require only that warrants be supported by probable cause to believe the evidence sought will be at the location to be searched at the time of the search.[10] The law permits anticipatory search warrants. In addition, anticipatory warrants encourage magistrate oversight of searches by allowing law enforcement agents to obtain a warrant in advance, rather than forcing them to go to the scene without a warrant and decide for themselves whether the facts justify a search.

ARGUMENT

TEXAS LAW DOES NOT PROHIBIT ANTICIPATORY SEARCH WARRANTS.

A. *Anticipatory search warrants are constitutional under the U.S. Constitution.*

The Third Court of Appeals accurately described anticipatory search warrants:

> An anticipatory search warrant is "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place." *United States v. Grubbs*, 547 U.S. 90, 94 (2006) (citing 2 W. LaFave, Search and Seizure § 3.7(c), 398 (4th ed. 2004)). Most anticipatory warrants "subject their execution to some condition precedent other than the mere passage of time—a so-called 'triggering condition.'" *Id*. The affidavit here, for example, explained that the search would take place "on or around the expected delivery date of June 9, 2017, after

[10] Except in specifically designated circumstances, inapplicable here.

> [Harris] has been able to confirm parcel delivery to said suspected place and premises."[11]

In *United States v. Grubbs*, the Supreme Court recognized anticipatory search warrants as constitutional.

> Because the probable-cause requirement looks to whether evidence will be found *when the search is conducted*, all warrants are, in a sense, "anticipatory." In the typical case where the police seek permission to search a house for an item they believe is already located there, the magistrate's determination that there is probable cause for the search amounts to a prediction that the item will still be there when the warrant is executed.
>
> ***
>
> Anticipatory warrants are, therefore, no different in principle from ordinary warrants. They require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed.[12]

Applicant concedes that "[t]he Court of Appeals correctly determined that anticipatory search warrants are constitutional under the 4th Amendment of the United States Constitution."[13] But he urges this Court to find that the Texas Constitution restricts such warrants, or failing that, that the Texas Legislature has done so under our search warrant statutes. Applicant's claims are unpersuasive.

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[11] *Parker*, 2021 WL 1567882, at *2.
[12] *Grubbs*, 547 U.S. at 95–96.
[13] Appellant's Brief ("App. Brf.") at 9.

B. *The Texas and U.S. Constitutions are too similar to justify different interpretations.*

1. There is no significant difference between Article I, §9 and the Fourth Amendment.

Applicant incorrectly claims this Court has "repeatedly in the past, exercise[d] its authority to construe language in the Texas Constitution to afford greater protections then the Fourth Amendment.[14] This Court has observed no significant difference between Article I, Section 9 and the Fourth Amendment,[15] and has clarified,

> When determining whether to apply Fourth Amendment precedent to Article I, Section 9, we have often noted the striking similarities between the two provisions and that they protect the same right to the same degree, but the touchstone of our analysis is whether the Supreme Court's reasoning makes more sense than the alternatives.[16]

2. Applicant's cited precedents have been discredited.

Applicant points to a few cases in which this Court has held Article I, § 9, to be more expansive than the Fourth Amendment. But the cases he cites—*Richardson*, *Autran*, and *Ibarra*[17]—are outliers, not the Court's regular practice.

This Court has recently noted:

> Although we have occasionally held that Texans have greater privacy rights under the Texas Constitution than the United States Constitution, we have since largely brought that caselaw back into line with the Supreme Court's interpretations of the Fourth Amendment.[18]

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[14] App. Brf. at 9-10.
[15] *Holder v. State*, 595 S.W.3d 691, 702 (Tex. Crim. App. 2020).
[16] *Holder*, 595 S.W.3d at 698.
[17] App. Brf. at 10.
[18] *Holder*, 595 S.W.3d at 698, fn.15.

Noting *Richardson, Autran,* and *Ibarra* as the exceptions to the rule, the Court noted: "We have since declined to follow *Richardson* and *Autran*, and we have limited our holding in *Ibarra*.[19]

In *Richardson,* this Court held that the installation and use of a pen register may constitute a search for purposes of the Texas Constitution, although the Supreme Court had determined otherwise in the Fourth Amendment context.[20] This Court has since explicitly declined to follow *Richardson.*[21]

In *Autran,*[22] a non-binding plurality opinion,[23] this Court held that Article I, § 9 provided broader protection than the Fourth Amendment in the vehicle inventory search context, holding that the Texas Constitution did not allow for opening closed

[19] *Id*., at 698, fn.15, citing *Hankston v. State*, 517 S.W.3d 112, 120 (Tex. Crim. App. 2017), cert. granted, judgment vacated, 138 S. Ct. 2706, 201 L. Ed. 2d 1093 (2018).
[20] *Richardson v. State*, 865 S.W.2d 944, 953 (Tex. Crim. App. 1993).
[21] *Hankston*, 517 S.W.3d at 122. Ironically, the U.S. Supreme Court remanded *Hankston* for reconsideration in light of *Carpenter*, in which the Supreme Court found the Fourth Amendment provides greater protection for privacy rights in cell-site records than that recognized under the Texas Constitution. *Carpenter v. United States*, 138 S. Ct. 2206, 2223, 201 L. Ed. 2d 507 (2018).
[22] App. Brf., at 10, citing *Autran v. State*, 887 S.W.2d 31 (Tex. Crim. App. 1994).
[23] Plurality opinions do not constitute binding authority. *Unkart v. State*, 400 S.W.3d 94, 100 (Tex. Crim. App. 2013). *See also, Garza v. State*, 137 S.W.3d 878, 884 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd) (explaining that the plurality holding in *Autran* is not binding precedent); *Trujillo v. State*, 952 S.W.2d 879, 881 (Tex. App.—Dallas 1997, no pet.)("*Autran*, a three-judge plurality opinion, is not binding precedent.")

containers.[24] Since *Autran* was decided, this Court has not followed *Autran*'s holding concerning closed container inventories under the Texas Constitution.[25]

In *State v. Ibarra*, this Court held that, although the U.S. Constitution requires the State to prove voluntariness of consent by a preponderance of the evidence, the Texas Constitution requires proof by clear and convincing evidence.[26] This Court has held "[w]ith regard to *Ibarra*…that holding [is] confined to the context where the State must prove voluntariness of consent."[27]

Applicant suggests that this Court should read Article I, §9, as more expansive than the Fourth Amendment solely because it has been done before. The Supreme Court's reasoning clearly makes more sense than following precedents this Court has disavowed. As this Court has said, "We will not read Article I, § 9 differently than the Fourth Amendment in a particular context simply because we can."[28]

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[24] *Autran*, 887 S.W.2d at 41–42.
[25] *Rothenberg v. State*, 176 S.W.3d 53, 59 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd)("[T]he high court has never followed *Autran*'s specific holding concerning the validity of inventories of closed containers under the Texas Constitution.").
[26] *State v. Ibarra*, 953 S.W.2d 242, 245 (Tex. Crim. App. 1997).
[27] *Hankston*, 517 S.W.3d at 120.
[28] *Id.*, citing *Hankston*, 517 S.W.3d at 115.

C. *Texas' search warrant statutes do not prohibit anticipatory search warrants.*

1. *Texas Code of Criminal Procedure article 18.01 does not require narcotic search warrant affidavits to show the drugs are currently on the property to be searched.*

Applicant notes that a state legislature may disallow anticipatory search warrants by statute, as a small number have.[29] Applicant provides some examples, such as *People v. Poirez*, in which the Colorado Supreme Court found the Colorado statute did not authorize anticipatory warrants. Said statue requires "probable cause to believe that the property to be searched for, seized, or inspected *is located at, in, or upon the premises,* person, place, or thing to be searched."[30] Similarly, Iowa's Supreme Court has held that their search warrant statutes "do not contemplate future acts or events as constituting probable cause."[31] Maryland's Court of Appeals noted that their search warrant statute "literally…contemplates that the crime 'is being committed' and that the property 'is situated or located' on the described premises when the judge is asked to rule."[32]

The relevant Texas statutes include no similar language requiring that the warrant's subject be currently located at, in, or upon the premises. Article 18.01(b), Texas Code of Criminal Procedure, reads:

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[29] App.Brf. at 11.
[30] *People v. Poirez*, 904 P.2d 880, 882 (Colo. 1995)(Emphasis the court's.)
[31] *State v. Ramirez*, 895 N.W.2d 884, 893 (Iowa 2017).
[32] *Kostelec v. State*, 703 A.2d 160, 163 (1997).

> No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

Article 18.02(a)(7), dealing specifically with narcotics crimes, adds, "A search warrant may be issued to search for and seize…a drug, [or] controlled substance,…kept, prepared, or manufactured in violation of the laws of this state."[33] Neither statute requires that the searched for drugs be at the location when the affidavit is submitted, so long as the affidavit establishes that probable cause exists to justify the requested search.

Applicant cites *Mahmoudi v. State*, for the proposition that "Texas magistrates are precluded from issuing anticipatory search warrants under state law."[34] *Mahmoudi*, however, was not referencing search warrants generally, but only those implicating article 18.01(c)(3), which prohibits warrants under article 18.02(a)(10) unless "the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched."[35] The exception proves the rule: if the Legislature had intended that all warrants require an affidavit showing that the sought items "are located" at the search location, then there would be no need to create

[33] Tex. Code Crim. Pro. art. 18.02(a)(7).
[34] App. Brf. at 9.
[35] *Mahmoudi v. State*, 999 S.W.2d 69, 72 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd); Tex. Code Crim. Pro. art. 18.01(c).

a separate rule for warrants under 18.02(a)(10).[36] As the Third Court of Appeals recognized, "when the Legislature intends to prohibit magistrates from issuing warrants unless the affidavit includes a certain type of facts, it does so expressly."[37]

2. Texas requires probable cause to believe that the evidence will be found when the search is conducted.

Applicant urges this Court to interpret the phrase "probable cause does in fact exist" as prohibiting a warrant based on "an affidavit asserting that probable cause will exist at some future time upon the occurrence of some condition precedent."[38] But this Court has said, "Probable cause exists when, under the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found at the specified location."[39] The U.S. Supreme Court similarly says, "Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place."[40]

Both this Court and the U.S. Supreme Court contemplate that the point in time pertinent to the probable cause determination is when the search is conducted, *i.e.* when the evidence "will be found." In other words, probable cause to believe the evidence

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[36] *See, e.g., Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014)(Courts should presume that every word in a statute has been used for a purpose.) If all warrants had the same requirement as those directed at 18.02(a)(10) warrants, then 18.01(c)(3) would be superfluous.
[37] *Parker*, 2021 WL 1567882, at *3.
[38] App. Brf. at 8.
[39] *State v. McLain*, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011).
[40] *Grubbs*, 547 U.S. at 95, citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

"will be found" exists when the facts justify the conclusion that the evidence will be there when the search occurs.

The U.S. Supreme Court has been explicit in this regard:

> Because the probable-cause requirement looks to whether evidence will be found *when the search is conducted*, all warrants are, in a sense, "anticipatory." …[W]hen an anticipatory warrant is issued, "the fact that the contraband is not presently located at the place described in the warrant is immaterial, so long as there is probable cause to believe that it will be there when the search warrant is executed." *United States v. Garcia*, 882 F.2d 699, 702 (C.A.2 1989) (quoting *United States v. Lowe*, 575 F.2d 1193, 1194 (C.A.6 1978); internal quotation marks omitted).
>
> Anticipatory warrants are, therefore, no different in principle from ordinary warrants. They require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive will be on the described premises (3) when the warrant is executed.[41]

Texas' search warrant statutes require no more than probable cause to support the search. Anticipatory search warrants supported by probable cause do not run afoul of the Legislature's requirements any more than they do the Constitution's.

[41] *United States v. Grubbs*, 547 U.S. at 96 (Emphasis the Court's). Prior to *Grubbs*, all the federal circuit courts had approved anticipatory warrants. *See Dodson v. State*, 150 P.3d 1054, 1056 (Okla. 2006), citing *United States v. Ricciardelli*, 998 F.2d 8, 11 (1st Cir.1993); *United States v. Garcia*, 882 F.2d 699, 703 (2nd Cir.1989); *United States v. Loy*, 191 F.3d 360, 364 (3rd Cir.1999); *United States v. Goodwin*, 854 F.2d 33, 36 (4th Cir.1988); *United States v. Wylie*, 919 F.2d 969, 974 (5th Cir.1990); *United States v. Lowe*, 575 F.2d 1193, 1194 (6th Cir.1978); *United States ex. rel. Beal v. Skaff*, 418 F.2d 430, 432–433 (7th Cir.1969); *United States v. Tagbering*, 985 F.2d 946, 950 (8th Cir.1993); *United States v. Goff*, 681 F.2d 1238, 1240 (9th Cir.1982); *United States v. Hugoboom*, 112 F.3d 1081, 1085 (10th Cir.1997); and *United States v. Santa*, 236 F.3d 662, 673 (11th Cir.2000).

D. ***Anticipatory search warrants are preferable to no warrant.***

1. Prior probable cause review by a magistrate is better than requiring law enforcement to forego a warrant and rely on exigent circumstances.

As this Court has previously observed, "the informed and deliberate determinations of magistrates empowered to issue warrants are to be preferred over the hurried action of officers who may happen to make arrests."[42] In keeping with this principle, courts defer to the magistrate's probable cause determination.[43] The Legislature also encourages this policy by allowing otherwise suppressible evidence to be used when obtained by an officer "acting in objective good faith reliance upon a warrant."[44] The same principle favors anticipatory search warrants.

Federal and State constitutional objectives are best served if law enforcement agents are encouraged to obtain a magistrate's authorization before conducting a search. The federal courts have long acknowledged that

> the purposes of the fourth amendment are best served by permitting government agents to obtain warrants in advance if they can show probable cause to believe that the contraband will be located on the premises at the time that search takes place.[45]

Anticipatory warrants "better serve the objective of the Fourth Amendment by allowing law enforcement agents to obtain a warrant in advance of delivery, rather than

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[42] *McLain*, 337 S.W.3d at 271.
[43] *Id.*
[44] Tex. Code Crim. Pro. art. 38.23.
[45] *Garcia*, 882 F.2d at 703.

forcing them to go to the scene without a warrant and decide for themselves, subject to second-guessing by judicial authorities, whether the facts justify a search."[46]

Applicant's cautionary hypothetical,[47] in which a nefarious person "sets up" an unsuspecting victim by sending a package of contraband with the victim's name and address as both the destination and the return address, makes this point. If we imagine police learn of such a package, they would still have the same probable cause to search for the package after delivery as before. Requiring them to wait until after the package arrives to seek a warrant only increases the risk that they will observe some circumstance that, in the opinion of the officers alone, justifies entry without a warrant to prevent the evidence's loss or destruction. Applicant's brief does not answer the question, "Why is it preferable to deny law enforcement the opportunity to obtain a magistrate's authorization—or denial of such—beforehand?"

Furthermore, anticipatory warrants may offer greater protection against unreasonable searches than typical warrants. By requiring that the officer wait for a triggering event, such warrants ensure that the search will be justified by probable

[46] *United States v. Iwai*, 930 F.3d 1141, 1154 (9th Cir. 2019), cert. denied, 141 S. Ct. 1049, 208 L. Ed. 2d 520 (2021), citing *United States v. Santa*, 236 F.3d 662, 673 (11th Cir. 2000). *See also, Vale v. Louisiana*, 399 U.S. 30, 34–35, 90 S.Ct. 1969, 1971–1972, 26 L.Ed.2d 409 (1970); *United States v. Gendron*, 18 F.3d 955, 965 (1st Cir. 1994).
[47] *See* App. Brf. at 12.

cause when it happens, rather than authorizing a search based only on the known prior location of the sought-after evidence.[48]

2. When state statutes have been held to prohibit anticipatory warrants, state legislatures change the statutes.

Applicant notes in his brief that some state courts have found anticipatory search warrants to be constitutional, but unauthorized by their particular state statutes.[49] Many of those states subsequently amended their statutes to provide for such warrants.[50] For example, in *People v. Ross*, the Illinois Supreme Court found anticipatory search warrants did not meet their 1995 warrant statute's requirements.[51] Two years later, Illinois amended its statutes to authorize anticipatory search warrants.[52] In response to Hawaii's Supreme Court's 1998 decision in *State v. Scott*,[53] "the legislature amended [Hawaii's search warrant statute] to authorize the issuance of anticipatory search warrants."[54] In 1996, the Alabama Supreme Court found anticipatory search warrants to run afoul of their statutory requirement that warrants issue only for "evidence of a criminal offense that has *already occurred*" or which is "*presently in possession"* of

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[48] *Gendron*, 18 F.3d at 965, citing 2 Wayne R. LaFave, Search and Seizure § 3.7(c), at 97 (2d ed. 1987).
[49] App. Brf. at 11.
[50] *Dodson v. State*, 150 P.3d 1054, 1057–58 (Okla. Crim. App. 2006).
[51] *People v. Ross*, 659 N.E.2d 1319, 1322 (1995).
[52] *See*, *People v. Nwosu*, 683 N.E.2d 148, 152 (1997)("The statute, since amended… now includes language similar to Rule 41(b) of the Federal Rules of Criminal Procedure (Fed. R.Crim.Proc. 41(b)), which authorizes anticipatory search warrants.")
[53] *State v. Scott*, 951 P.2d 1243 (1998).
[54] *State v. Curtis*, 394 P.3d 716, 723 (2017), citing 1998 Haw. Sess. Laws Act 65, § 1 at 145.

the suspect.[55] Shortly thereafter, the Alabama Supreme Court adopted amended rules to permit anticipatory search warrants.[56]

Applicant also cites the Florida Supreme Court's *Bernie v. State*[57] as an example of a court recognizing that anticipatory search warrants are Constitutional, but unlawful under state law. In *Bernie*, however, the opposite is true. The Florida search warrant statute provided that "No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless... [t]he law relating to narcotics or drug abuse *is being violated therein*."[58] Their Supreme Court noted, however, that

> a reasonable construction of the emphasized words in the statute allows a warrant to be issued when the evidence and supporting affidavit show that the drugs have already been discovered through a legal search and seizure and are presently in the process of being transported to the designated residence which is being used as the drug drop.[59]

Therefore, the Court found, "the anticipatory search warrant issued under the circumstances of this case is valid and does not violate the provisions of the United States Constitution, the Florida Constitution, or [the warrant statute]."[60]

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[55] *Ex parte Oswalt*, 686 So. 2d 368, 373 (Ala. 1996).
[56] *Turner v. State*, 792 So. 2d 1138, 1139 (Ala. Crim. App. 1998), rev'd sub nom. *Ex parte Turner*, 792 So. 2d 1141 (Ala. 2000). ("In response to *Ex parte Oswalt, supra*, the Criminal Rules Advisory Committee redrafted Rules 3.7 and 3.8, Ala.R.Crim. P., to permit anticipatory search warrants.").
[57] *Bernie v. State*, 524 So. 2d 988 (Fla. 1988).
[58] *Id*. at 992 (emphasis the Court's).
[59] *Id.*
[60] *Id.*

The fact that a small number of states have search warrant statutes that are incompatible with anticipatory search warrants is immaterial to this Court's determination. Texas is not one of those states. Police should be encouraged to seek a magistrate's authorization in these circumstances rather than act without a warrant simply because a highly predictable triggering event has not yet occurred. Our statute allows for searches when a magistrate finds probable cause to believe evidence will be found following a future event. Texas' warrant statutes' plain language does not prohibit anticipatory search warrants, so there is no need for this Court to compel the Texas legislature to "fix" our statute to allow magistrates to issue such warrants, as other states with different statutes have had to do. The Texas legislature has already determined the limited circumstances under which anticipatory search warrants are disapproved. Applicant's case is not within that category.

CONCLUSION

The Third Court of Appeals did not err in finding anticipatory search warrants lawful under the U.S. and Texas Constitutions and the Texas search warrant statutes. Such warrants are not only lawful, but desirable. Anticipatory search warrants ensure that law enforcement agents will be encouraged to seek authorization from a magistrate before contraband is delivered rather than making a hurried warrant request later or determining that a lack of time requires warrantless intrusion.

PRAYER FOR RELIEF

For the reasons stated herein, the State prays that the Court affirm the Third Court of Appeals' judgment.

Respectfully submitted,

By: Wesley H. Mau

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CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P., RULE 9.4

I certify that this brief contains 4,328 words,[61] as reported by Microsoft Word, the software used to prepare the brief.

Wesley H. Mau

Wesley H. Mau
Criminal District Attorney

[61] Briefs in the Court of Criminal Appeals must comply with the requirements of Rules 9 and 38, Tex. R. App. P. Tex. R. App. P. 70.3. Rule 9.4(i)(2)(B) limits briefs in the appellate courts to 15,000 words if computer generated.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing brief has been delivered via efile to:

E.G. Morris, Attorney for Applicant
Angelica Cogliano, Attorney for Applicant
Stacey Soule, State Prosecuting Attorney

on this the 27th day of November, 2021.

Wesley H. Mau
Criminal District Attorney

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